

10:19 am, Jun 18, 2019

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
LONG ISLAND OFFICE**

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TRUSTEES OF THE LOCAL 138, 138A &  
138B INTERNATIONAL UNION OF  
OPERATING ENGINEERS WELFARE FUND,  
ANNUITY FUND, LEGAL FUND,  
VACATION FUND, APPRENTICESHIP  
TRAINING FUND, and TRUSTEES OF THE  
CENTRAL PENSION FUND OF THE  
INTERNATIONAL UNION OF OPERATING  
ENGINEERS,

**MEMORANDUM OF  
DECISION & ORDER**

2:17-cv-04651 (ADS) (AYS)

Plaintiffs,

-against-

CARLO LIZZA & SONS PAVING INC.,

Defendants.

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**APPEARANCES:**

**Pitta LLP**

*Co-Counsel for the Plaintiffs*

120 Broaway, 28th Floor

New York, NY 10271

By: Joseph Michael Bonomo, Esq.,  
Michael Bauman, Esq., Of Counsel.

**DeCotiis, Fitzpatrick, Cole & Giblin LLP**

*Co-Counsel for the Plaintiffs*

Glenpointe Centre West

500 Frank W. Burr Boulevard

Teaneck, NJ 07666

By: Vipin Pallickathu Varghese, Esq., Of Counsel.

**SPATT, District Judge:**

On August 8, 2017, the Plaintiffs brought this action pursuant to sections 502(a)(3) and 515 of the Employee Retirement Income Security Act, as amended (“ERISA”), 29 U.S.C. §§ 1132(a)(3), 1145, and section 301 of the Labor Management Relations Act, 29 U.S.C. § 185,

(“LMRA”), to recover unpaid and delinquent benefit fund contributions, for injunctive and other equitable relief, and for breach of contract.

On August 24, 2018, the Clerk of the Court issued a Certificate of Default, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

On October 31, 2018, the Plaintiffs moved for a default judgment against the Defendant.

On November 5, 2018, the Court referred the motion to United States Magistrate Judge Anne Y. Shields for a Report and Recommendation as to as to whether the motion for default judgment should be granted, and if so, what relief, if any, should be awarded.

On May 28, 2019, Judge Shields issued a Report and Recommendation (“R&R”) recommending as follows:

- (1) a default judgment is warranted and should be GRANTED against Defendant Carlos Lizza & Sons Paving Inc.;
- (2) Plaintiffs’ request of \$149,190.28 for unpaid contributions be GRANTED;
- (3) Plaintiffs’ request of \$15,543.55 for interest on unpaid contributions be GRANTED;
- (4) Plaintiffs’ request of \$29,838.06 for liquidated damages be GRANTED;
- (5) Plaintiffs’ request for attorneys’ fees of \$4,945 be GRANTED; and
- (6) Plaintiffs be awarded a total of \$10.35 in other costs.

ECF 35 at 5.

The Plaintiffs filed proof of service on May 29, 2019.

It has been more than fourteen days since the service of the R&R, and the parties have not filed objections.

As such, pursuant to 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72, this Court has reviewed the R&R for clear error, and finding none, now concurs in both its reasoning and its result. *See Coburn v. P.N. Fin.*, No. 13-CV-1006 (ADS) (SIL), 2015 WL 520346, at \*1 (E.D.N.Y. Feb. 9, 2015) (reviewing Report and Recommendation without objections for clear error).

Accordingly, the R&R is adopted in its entirety. The Plaintiffs' motion for default judgment is granted. The Plaintiffs are awarded damages, attorney's fees and costs in the amounts set out in the R&R.

**SO ORDERED.**

Dated: Central Islip, New York

June 18, 2019

/s/ Arthur D. Spatt

ARTHUR D. SPATT

United States District Judge